

106TH CONGRESS  
2D SESSION

# S. 2841

To ensure that the business of the Federal Government is conducted in the public interest and in a manner that provides for public accountability, efficient delivery of services, reasonable cost savings, and prevention of unwarranted Government expenses, and for other purposes.

---

## IN THE SENATE OF THE UNITED STATES

JULY 10, 2000

Mr. ROBB (for himself, Mr. DURBIN, Mr. SARBANES, Ms. MIKULSKI, Mr. AKAKA, Mr. WELLSTONE, Mr. FEINGOLD, Mr. SCHUMER, and Mr. KENNEDY) introduced the following bill; which was read twice and referred to the Committee on Governmental Affairs

---

## A BILL

To ensure that the business of the Federal Government is conducted in the public interest and in a manner that provides for public accountability, efficient delivery of services, reasonable cost savings, and prevention of unwarranted Government expenses, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

2 (a) SHORT TITLE.—This Act may be cited as the  
3 “Truthfulness, Responsibility, and Accountability in Con-  
4 tracting Act of 2000”.

5 (b) TABLE OF CONTENTS.—The table of contents of  
6 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Definitions.
- Sec. 3. Certification of compliance.
- Sec. 4. Agency reporting systems and required reports.
- Sec. 5. Requirement for public-private competition.
- Sec. 6. Review of contractor performance.
- Sec. 7. Survey of wages and benefits provided by contractors.
- Sec. 8. Comptroller General reports.
- Sec. 9. Applicability.

7 **SEC. 2. DEFINITIONS.**

8 As used in this Act:

9 (1) The term “employee” means any individual  
10 employed—

11 (A) as a civilian in a military department  
12 (as defined in section 102 of title 5, United  
13 States Code);

14 (B) in an Executive agency (as defined in  
15 section 105 of title 5, United States Code), in-  
16 cluding an employee who is paid from non-  
17 appropriated funds;

18 (C) in those units of the legislative and ju-  
19 dicial branches of the Federal Government hav-  
20 ing positions in the competitive service;

21 (D) in the Library of Congress;

1 (E) in the Government Printing Office; or

2 (F) by the Governors of the Federal Re-  
3 serve System.

4 (2) The term “agency” means any department,  
5 agency, bureau, commission, activity, or organization  
6 of the United States, that employs an employee (as  
7 defined in paragraph (1)).

8 (3) The term “non-Federal personnel” means  
9 employed individuals who are not employees, as de-  
10 fined in paragraph (1).

11 (4) The term “contractor” means an individual  
12 or entity that performs a function for an agency  
13 under a contract with non-Federal personnel.

14 (5) The term “privatization” means the action  
15 by an agency to exit a business line, terminate an  
16 activity, or sell Government owned assets or oper-  
17 ational capabilities to the non-Federal sector.

18 (6) The term “outsourcing” means the action  
19 by an agency to acquire services from external  
20 sources, either from a non-Federal source or through  
21 interservice support agreements, through a contract.

22 (7) The term “contracting out” means the con-  
23 version by an agency of the performance of a func-  
24 tion to performance by non-Federal personnel under

1 a contract between an agency and an individual or  
 2 other entity.

3 (8) The term “contracting in” is the conversion  
 4 of the performance of a function by non-Federal per-  
 5 sonnel under a contract between an agency and an  
 6 individual or other entity to the performance by em-  
 7 ployees.

8 (9) The term “contracting” means—

9 (A) the performance of a function by non-  
 10 Federal personnel under a contract between an  
 11 agency and an individual or another entity; and

12 (B) includes privatization, outsourcing,  
 13 contracting out, and contracting in, unless oth-  
 14 erwise specifically provided.

15 **SEC. 3. CERTIFICATION OF COMPLIANCE.**

16 (a) REQUIREMENTS FOR HEADS OF AGENCIES.—(1)  
 17 The head of each agency shall, not later than 180 days  
 18 after the date of the enactment of this Act, submit to the  
 19 Director of the Office of Management and Budget a cer-  
 20 tification that—

21 (A) the agency has established a centralized re-  
 22 porting system in accordance with section 4;

23 (B) in the case of each function of the agency  
 24 that is being performed under contracting, the con-

1       tracting function decision was based on a public-pri-  
2       vate competition described under section 5;

3               (C) the agency is not managing Federal em-  
4       ployees by any arbitrary limitations in accordance  
5       with sections 5 and 6; and

6               (D) the agency is reviewing work performed by  
7       contractors, recompeting or contracting in work  
8       when appropriate, and subjecting to public-private  
9       competition an equivalent number of Federal em-  
10      ployee and contractor positions in accordance with  
11      section 6.

12      (2) The Director of the Office of Management and  
13      Budget shall—

14              (A) promptly after receiving certifications under  
15      paragraph (1)(B), publish in the Federal Register  
16      notices of the availability of the certifications to the  
17      public, including the names, addresses, and tele-  
18      phone numbers of the officials from whom the cer-  
19      tifications can be obtained; and

20              (B) ensure that, after the removal of propri-  
21      etary information, the head of each agency makes  
22      the certifications of that agency available to the  
23      public—

24                      (i) upon request; and

25                      (ii) on the World Wide Web.

1 (b) SUSPENSION OF CONTRACTING FOR SERVICES  
2 PENDING SATISFACTION OF CERTIFICATION REQUIRE-  
3 MENT.—(1) Beginning 180 days after the date of the en-  
4 actment of this Act, the head of an agency may not enter  
5 into any contract for the performance of services until the  
6 Director of the Office of Management and Budget, after  
7 reviewing the certification required under subsection  
8 (a)(1), determines that the agency is making substantial  
9 progress toward meeting the requirements under sub-  
10 section (a)(1) (A), (B), (C), and (D).

11 (2) If an agency head is prohibited from entering into  
12 a contract after a determination is made under paragraph  
13 (1), that agency head may subsequently request another  
14 determination from the Director of the Office of Manage-  
15 ment and Budget under that paragraph.

16 (3) The Director of the Office of Management and  
17 Budget shall—

18 (A) promptly after making a determination as  
19 to whether an agency is making substantial progress  
20 under paragraph (1), publish that determination in  
21 the Federal Register; and

22 (B) make that determination available to the  
23 public—

24 (i) upon request; and

25 (ii) on the World Wide Web.

1       (c) WAIVER OF SUSPENSION.—(1) The Director of  
2 the Office of Management and Budget may waive the ap-  
3 plicability of this section to a contract for services if the  
4 Director determines that it is necessary to do so in the  
5 interest of the national security, extraordinary economic  
6 harm, or patient care.

7       (2) After granting any waiver under this subsection,  
8 the Director of the Office of Management and Budget  
9 shall promptly publish a notice of that waiver in the Fed-  
10 eral Register that—

11           (A) identifies the facilities, units, or activities  
12       affected;

13           (B) explains the justification for the waiver;  
14       and

15           (C) identifies the duration of the waiver.

16       (d) GAO MONITORING.—While an agency is oper-  
17 ating under a suspension of contracting authority under  
18 subsection (b), the Comptroller General shall—

19           (1) monitor the agency’s compliance with the  
20       requirements of this Act; and

21           (2) submit to Congress, every 60 days, a report  
22       on the extent of the agency’s compliance with such  
23       requirements.

1 **SEC. 4. AGENCY REPORTING SYSTEMS AND REQUIRED RE-**  
2 **PORTS.**

3 (a) CENTRALIZED REPORTING SYSTEM.—Not later  
4 than 180 days after the date of the enactment of this Act,  
5 each agency shall establish a centralized reporting system  
6 in accordance with guidance promulgated by the Office of  
7 Management and Budget that allows the agency to gen-  
8 erate periodic reports on the contracting efforts of the  
9 agency. Such centralized reporting system shall be de-  
10 signed to enable the agency to generate reports on efforts  
11 regarding both contracting out and contracting in.

12 (b) REPORTS ON CONTRACTING EFFORTS.—(1) Not  
13 later than 180 days after the date of the enactment of  
14 this Act, every agency shall generate and submit to the  
15 Director of the Office of Management and Budget a report  
16 on the contracting efforts of the agency undertaken during  
17 the 2 fiscal years immediately preceding the fiscal year  
18 during which this Act is enacted. Such report shall comply  
19 with the requirements in paragraph (3).

20 (2) For the current fiscal year and every fiscal year  
21 thereafter, every agency shall complete and submit to the  
22 Director of the Office of Management and Budget a report  
23 on the contracting efforts undertaken by the agency dur-  
24 ing that fiscal year. The report for a fiscal year shall com-  
25 ply with the requirements in paragraph (3), and shall be



1 completed and submitted not later than the end of the first  
2 fiscal quarter of the subsequent fiscal year.

3 (3) The reports referred to in this subsection shall  
4 include the following information with regard to each con-  
5 tracting effort undertaken by the agency:

6 (A) The contract number and the Federal sup-  
7 ply class or service code.

8 (B) A statement of why the contracting effort  
9 was undertaken and an explanation of what alter-  
10 natives to the contracting effort were considered and  
11 why such alternatives were ultimately rejected.

12 (C) The names, addresses, and telephone num-  
13 bers of the officials who supervised the contracting  
14 effort.

15 (D) The competitive process used or the statu-  
16 tory or regulatory authority relied on to enter into  
17 the contract without public-private competition.

18 (E) The cost of Federal employee performance  
19 at the time the work was contracted out (if the work  
20 had previously been performed by Federal employ-  
21 ees).

22 (F) The cost of Federal employee performance  
23 under the most efficient organization plan identified  
24 for that performance (if the work was contracted out  
25 through OMB Circular A-76).

1 (G) The anticipated cost of contractor perform-  
2 ance, based on the award.

3 (H) The current cost of contractor perform-  
4 ance.

5 (I) The actual savings, expressed both as a dol-  
6 lar amount and as a percentage of the cost of per-  
7 formance by Federal employees, based on the cur-  
8 rent cost, and an explanation of the difference, if  
9 any.

10 (J) A description of the quality control process  
11 used by the agency in connection with monitoring  
12 the contracting effort, identification of the applicable  
13 quality control standards, the frequency of the prep-  
14 aration of quality control reports, and an assessment  
15 of whether the contractor met, exceeded, or failed to  
16 achieve the quality control standards.

17 (K) The number of employees performing the  
18 contracting effort under the contract and any re-  
19 lated subcontracts.

20 (c) REPORT ON CONTRACTING IN EFFORTS.—(1)

21 For the current fiscal year and every fiscal year thereafter,  
22 every agency shall complete and submit to the Director  
23 of the Office of Management and Budget a report on the  
24 contracting in efforts undertaken by the agency during  
25 that fiscal year. The report for a fiscal year shall comply

1 with the requirements in paragraph (2), and shall be com-  
2 pleted and submitted not later than the end of the first  
3 fiscal quarter of the subsequent fiscal year.

4 (2) The reports referred to in paragraph (1) shall in-  
5 clude the following information for each contracting in ef-  
6 fort undertaken by the agency:

7 (A) A description of the type of work involved.

8 (B) A statement of why the contracting in ef-  
9 fort was undertaken.

10 (C) The names, addresses, and telephone num-  
11 bers of the officials who supervised the contracting  
12 in effort.

13 (D) The cost of performance at the time the  
14 work was contracted in.

15 (E) The current cost of performance by Federal  
16 employees or military personnel.

17 (d) REPORT ON EMPLOYEE POSITIONS.—Not later  
18 than 30 days after the end of each fiscal year, every agen-  
19 cy shall submit to the Office of Management and Budget  
20 a report on the number of Federal employee positions and  
21 positions held by non-Federal employees under a contract  
22 between the agency and an individual or entity that has  
23 been subject to public-private competition during that fis-  
24 cal year.

1       (e) SUBMISSION OF REPORTS TO CONGRESS.—(1)

2   The Office of Management and Budget shall compile all  
3   reports submitted under this section and submit the re-  
4   ports to the committees referred to under paragraph (2),  
5   not later than 120 days after the end of the applicable  
6   fiscal year.

7       (2) The reports compiled under this subsection shall  
8   be submitted to the Committee on Government Reform of  
9   the House of Representatives and to the Committee on  
10  Governmental Affairs of the Senate.

11       (f) PUBLICATION.—The Director of the Office of  
12  Management and Budget shall promptly publish in the  
13  Federal Register notices including a description of when  
14  the reports referred to in this section are available to the  
15  public and the names, addresses, and telephone numbers  
16  of the officials from whom the reports may be obtained.

17       (g) AVAILABILITY ON INTERNET.—After the excision  
18  of proprietary information, the reports referred to in this  
19  section shall be made available through the Internet.

20       (h) REVIEW.—The Director of the Office of Manage-  
21  ment and Budget shall review the reports referred to in  
22  this section and consult with the head of the agency re-  
23  garding the content of such reports.

1 **SEC. 5. REQUIREMENT FOR PUBLIC-PRIVATE COMPETI-**  
2 **TION.**

3 (a) IN GENERAL.—(1) After the date of the enact-  
4 ment of this Act and in accordance with section 3, any  
5 decision by an agency to initiate or continue a privatiza-  
6 tion, outsourcing, contracting in, or contracting out (in-  
7 cluding any continuation by the exercise of an option, ex-  
8 tension, or renewal) for the performance of a function  
9 shall be based on the results of a public-private competi-  
10 tion process that—

11 (A) formally compares the costs of Federal em-  
12 ployee performance of the function with the costs of  
13 the performance by a contractor;

14 (B) employs the most efficient organization  
15 process described in OMB Circular A–76; and

16 (C) is conducted in consultation or through bar-  
17 gaining with the exclusive representative of the Fed-  
18 eral employees performing the function, if applicable.

19 (2) This subsection applies only to contracting efforts  
20 undertaken on or after the date of the enactment of this  
21 Act.

22 (b) DETERMINATION OF COSTS.—(1) An agency shall  
23 commence or continue the performance of a function by  
24 Federal employees if, under a cost comparison performed  
25 under a public-private competition process described in  
26 subsection (a), the agency determines that at least a 10-

1 percent cost savings would not be achieved by performance  
2 of the function by a contractor.

3 (2) During the suspension established in section 3 of  
4 this Act, an agency may undertake a contracting effort  
5 made under the issuance of a waiver granted under section  
6 3 for a function that is not currently performed by Federal  
7 employees if the agency has determined the total cost to  
8 the agency of performing the function by a contractor and  
9 the total cost to the agency of having those services per-  
10 formed by Federal employees and that the contractor per-  
11 formance costs are less than the Federal employee per-  
12 formance costs.

13 (c) INAPPLICABILITY OF CERTAIN LIMITATION.—  
14 Notwithstanding any limitation on the number of Federal  
15 employees established by law, regulation, or policy, an  
16 agency may continue to employ, or may hire, such Federal  
17 employees as are necessary to perform work acquired  
18 through public-private competition required by this sec-  
19 tion.

20 **SEC. 6. REVIEW OF CONTRACTOR PERFORMANCE.**

21 (a) IN GENERAL.—If a report completed under sec-  
22 tion 4 indicates that, for 2 consecutive years, the actual  
23 cost of privatization, outsourcing, contracting in, or con-  
24 tracting out of a particular function exceeds the antici-  
25 pated cost of contractor performance, based on the award

1 (referred to in section 4(b)(3)(G)), or fails to substantially  
2 meet quality control standards (referred to in section  
3 4(b)(3)(J)), the agency shall either conduct a new public-  
4 private competition or convert the function to performance  
5 by Federal employees not later than the earlier of the date  
6 of the expiration of the contract or the beginning of the  
7 first fiscal year which is not more than 12 months after  
8 the initial determination that the cost of a contracting ef-  
9 fort exceeds the anticipated cost of contractor performance  
10 or that quality standards have not been substantially met.  
11 Any resulting terminations for convenience may be under-  
12 taken without cost to the United States Government. This  
13 subsection applies only to contracting efforts undertaken  
14 on or after the date of the enactment of this Act.

15 (b) PUBLIC-PRIVATE COMPETITION.—For each fiscal  
16 year, an agency shall subject to public-private competition  
17 an equivalent number of Federal employee positions and  
18 positions held by non-Federal employees under a contract  
19 between an agency and an individual or entity.

20 (c) INAPPLICABILITY OF CERTAIN LIMITATION.—  
21 Notwithstanding any limitation on the number of Federal  
22 employees established by law, regulation, or policy, an  
23 agency may continue to employ or may hire such Federal  
24 employees as are necessary to perform work acquired

1 through public-private competition required by this sec-  
2 tion.

3 **SEC. 7. SURVEY OF WAGES AND BENEFITS PROVIDED BY**  
4 **CONTRACTORS.**

5 (a) REQUIREMENT TO CONDUCT SURVEY.—Using  
6 information provided by agencies, the Secretary of Labor  
7 shall conduct a survey of the wages and quantifiable bene-  
8 fits provided by contractors to non-Federal personnel  
9 working in various occupations under contracts between  
10 agencies and individuals or entities that were entered into  
11 during the 2 fiscal years immediately preceding the date  
12 of the enactment of this Act.

13 (b) REVIEW.—(1) The Director of the Office of Per-  
14 sonnel Management shall—

15 (A) review the analysis prepared by the Sec-  
16 retary of Labor under subsection (a) and determine  
17 the extent to which the wages and quantifiable bene-  
18 fits paid by contractors are comparable to the wages  
19 and quantifiable benefits earned by Federal employ-  
20 ees; and

21 (B) issue a report on the findings of the review.

22 (2) Not later than 180 days after the date of the en-  
23 actment of this Act, the report shall be submitted to the  
24 Committee on Government Reform of the House of Rep-



1 representatives and to the Committee on Governmental Af-  
2 fairs of the Senate, and published in the Federal Register.

3 (c) GUIDANCE.—The Director of the Office of Man-  
4 agement and Budget shall issue guidance to implement  
5 this section.

6 **SEC. 8. COMPTROLLER GENERAL REPORTS.**

7 The Comptroller General shall report to the Com-  
8 mittee on Government Reform of the House of Represent-  
9 atives and the Committee on Governmental Affairs of the  
10 Senate every 60 days after the date of the enactment of  
11 this Act on the compliance by agencies with the require-  
12 ments of this Act.

13 **SEC. 9. APPLICABILITY.**

14 This Act does not apply with respect to the following:

15 (1) The General Accounting Office.

16 (2) Depot-level maintenance and repair of the  
17 Department of Defense (as defined in section 2460  
18 of title 10, United States Code).

○